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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 Ocean Garden Products Incorporated,
10 Plaintiff,
11 v.
12 Blessings Incorporated, et al.,
13 Defendants.

No. CV-18-00322-TUC-RM
Consolidated with:
No. CV-19-00284-TUC-RM

ORDER

15 Pending before the Court is a Rule 12(b)(2) Motion to Dismiss (“MTD”) filed by
16 Pacific Ocean Harvest, S. De R.L. De C.V. (“Pacific Ocean”) (Doc. 157.)¹

17 **I. Background**

18 This litigation began in July 2018, when Plaintiff Ocean Garden Products, Inc.
19 (“OG”) initiated a lawsuit against Blessings, Inc. (“Blessings”) and David Mayorquin
20 (“David”) in case number CV-18-322. (Doc. 1.) OG later initiated a separate lawsuit
21 alleging claims under Arizona’s Uniform Fraudulent Trade Act (“UFTA”) against
22 numerous defendants, including Pacific Ocean, in case number CV-19-284. (Doc. 1 in
23 CV-19-284) (the “UFTA Action”). After case numbers CV-18-322 and CV-19-284 were
24 consolidated, OG filed a First Amended Complaint in the UFTA Action (“UFTA FAC”),
25 the operative pleading with respect to Pacific Ocean. (Doc. 154.)

26 On July 9, 2019, Pacific Ocean filed the pending MTD (Doc. 157), which was
27 directed at OG’s original UFTA Complaint but which the parties appear to agree may be

28 ¹ All record citations herein refer to the page numbers generated by the Court’s electronic filing system and, unless otherwise noted, the docket in CV-18-322.

1 treated as seeking dismissal of the claims asserted against Pacific Ocean in the UFTA
2 FAC. (*See* Doc. 196 at 3 n.1; *see also* Doc. 186 at 4; *see generally* Doc. 187.) The MTD
3 was fully briefed on August 26, 2019. (Docs. 187, 196.) The Court held oral argument
4 on September 16, 2019, and took the matter under advisement. (Doc. 215.)

5 **II. Allegations of UFTA FAC Concerning Pacific Ocean**

6 OG’s UFTA FAC makes the following allegations with respect to Pacific Ocean:

7 At a time when Blessings was in serious financial distress and facing an existential
8 threat from a criminal investigation, David and his brother Abraham Mayorquin
9 (“Abraham”) ran up Blessings’ debt to OG and transferred millions of dollars—in
10 addition to equipment and intangible assets—from Blessings to a Mexican company
11 called ADAB Ocean Harvest, S. De R.L. De C.V. (“ADAB Mexico”), thereby isolating
12 the debts of their shrimp business in Blessings and the assets in ADAB Mexico. (Doc.
13 154 at 2, 5-10.) David and Abraham later set up Pacific Ocean in Nogales to take over
14 the business of ADAB Mexico (shrimp processing); they also set up a company called
15 ADAB Ocean Harvest LLC (“ADAB Tucson”) in Arizona to take over the business of
16 Blessings (shrimp sales). (*Id.* at 2, 13-14.)

17 Pacific Mexico now processes shrimp from a building formerly occupied by
18 ADAB Mexico in Nogales, Mexico, using ADAB Mexico’s equipment, which ADAB
19 Mexico received through fraudulent transfers from Blessings. (Doc. 154 at 14.) Pacific
20 Ocean uses the equipment based on an insider lease negotiated by David and Abraham.
21 (*Id.* at 14-15.) ADAB Mexico did not receive reasonably equivalent value in exchange
22 for the equipment lease, and Pacific Mexico did not enter into the lease in good faith. (*Id.*
23 at 17-18.) Abraham is the 99% owner of Pacific Ocean, but in reality David is still an
24 equitable owner and shares in revenues funneled from ADAB Tucson to ADAB Mexico
25 and Pacific Ocean. (*Id.* at 14-15.) Due to the Mayorquin brothers’ “cross-border
26 corporate shell game, Blessings is insolvent and judgment-proof” while ADAB Mexico
27 and Pacific Ocean are operational “primarily thanks to the millions of dollars” transferred
28 from Blessings. (*Id.* at 2.) Although Pacific Mexico is a Mexican entity with premises in

1 Nogales, Mexico, jurisdiction over it is proper because it is not a good-faith transferee of
2 assets fraudulently transferred to it from Blessings via ADAB Mexico. (*Id.* at 3-4.)

3 **III. Legal Standard**

4 “Federal courts apply state law to determine the bounds of their jurisdiction over a
5 party.” *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017). Arizona’s
6 long-arm statute permits the exercise of jurisdiction to the full extent permissible under
7 the United States Constitution. Ariz. R. Civ. P. 4.2(a); *Davis v. Metro Prod., Inc.*, 885
8 F.2d 515, 520 (9th Cir. 1989). In order for the exercise of personal jurisdiction over an
9 out-of-state defendant to comport with the requirements of due process under the United
10 States Constitution, the defendant must “have certain minimum contacts” with the forum
11 state “such that the maintenance of the suit does not offend traditional notions of fair play
12 and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal
13 quotation omitted).

14 The plaintiff bears the burden of establishing that the exercise of personal
15 jurisdiction is proper. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). This is
16 true even though the defendant is the moving party on a Rule 12(b)(2) motion to dismiss.
17 *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). But in the
18 absence of an evidentiary hearing, the plaintiff need only make “a prima facie showing of
19 personal jurisdiction.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800
20 (9th Cir. 2004) (internal quotation omitted).²

21 Personal jurisdiction can be general or specific. General personal jurisdiction
22 exists when the defendant’s affiliations with the forum state are so “continuous and
23 systematic” that the defendant can properly be said to be “at home” in that state.
24 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (internal
25 quotation omitted). A corporate defendant is typically “at home” only in its state of
26 incorporation and the state in which it has its principal place of business. *See id.* at 924.

28 ² The plaintiff must later establish the jurisdictional facts by a preponderance of the
evidence at a preliminary hearing or at trial. *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*,
557 F.2d 1280, 1285 (9th Cir. 1977).

1 Specific personal jurisdiction exists only when “the defendant’s suit-related conduct . . .
2 create[s] a substantial connection with the forum State.” *Walden v. Fiore*, 571 U.S. 277,
3 284 (2014). Three requirements must be satisfied for a court to exercise specific personal
4 jurisdiction over a non-resident defendant: (1) the defendant must have “purposefully
5 direct[ed] his activities or consummate[d] some transaction with the forum or resident
6 thereof” or “purposefully avail[ed itself] of the privileges of conducting activities in the
7 forum, thereby invoking the benefits and protections of its laws”; (2) the claim must have
8 arisen out of or relate to the defendant’s forum-related activities; and (3) “the exercise of
9 jurisdiction must comport with fair play and substantial justice, i.e. it must be
10 reasonable.” *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002). If the
11 plaintiff meets its burden of showing sufficient minimum contacts to satisfy the first two
12 requirements for exercising specific personal jurisdiction, the burden then shifts to the
13 defendant to “present a compelling case that the exercise of jurisdiction would not be
14 reasonable.” *Schwarzenegger*, 374 F.3d at 802 (internal quotation omitted).

15 In evaluating a motion to dismiss for lack of personal jurisdiction under Rule
16 12(b)(2), the Court is not restricted to the four corners of the Complaint and may consider
17 extrinsic evidence, including affidavits and discovery materials. *Doe v. Unocal Corp.*,
18 248 F.3d 915, 922 (9th Cir. 2001) (per curiam), abrogated on other grounds by *Daimler*
19 *AG v. Bauman*, 571 U.S. 117 (2014). Uncontroverted allegations of a complaint must be
20 taken as true. *Ranza*, 793 F.3d at 1068. Factual disputes are resolved in the plaintiff’s
21 favor. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006).³

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24 ³ At oral argument, Defendants argued that looking only to the allegations of Plaintiff’s FACs is inappropriate given the procedural history of this case, since the parties have engaged in some discovery and the Court held a three-day evidentiary hearing on Plaintiff’s Motion for Preliminary Injunction. The injunction hearing places the pending jurisdictional motion in an unusual procedural posture. Because the Court has not held an evidentiary hearing specifically regarding the pending jurisdictional motion, the Court finds that only a *prima facie* showing of personal jurisdiction is required at this stage of the case. However, to the extent that allegations of Plaintiff’s UFTA FAC are controverted by other materials in the record, the Court will not take the controverted allegations as true. Instead, the Court will look to the record evidence, resolving factual disputes in Plaintiff’s favor.

1 **IV. Discussion**

2 Pacific Ocean argues that it lacks minimum contacts with Arizona sufficient to
3 establish personal jurisdiction. (Doc. 157.) Pacific Ocean supports its argument with a
4 declaration by Abraham. (Doc. 24-1 in CV 19-284.)⁴ The declaration avers that Pacific
5 Ocean is a Mexican corporation with its place of business in Nogales, Mexico. (*Id.* at 3.)
6 Its employees and equipment are located in Mexico, it pays taxes in Mexico, and it does
7 not advertise, operate, or have any physical presence in Arizona. (*Id.* at 5.) Pacific
8 Ocean rents a building in Nogales, Mexico from an unrelated landlord. (*Id.*) It leases
9 certain processing equipment from ADAB Mexico and pays fair market value for its use
10 of the equipment. (*Id.*) Pacific Ocean is owned by Abraham and a non-party named José
11 Ramón Martinez; neither David nor Blessings have any ownership interest in the
12 company and are not directly or indirectly involved in its day-to-day management. (*Id.* at
13 4.) Abraham created Pacific Ocean and ADAB Tucson in order to continue to sell
14 shrimp to support his family after David and Blessings were indicted in a criminal case
15 involving sea cucumber exportation. (*Id.*)

16 **A. General Jurisdiction**

17 Pacific Ocean is not incorporated in Arizona, does not have its principal place of
18 business in this state, and does not have affiliations with Arizona that are so continuous
19 and systematic as to establish general personal jurisdiction. *See Goodyear Dunlop Tires*
20 *Operations*, 564 U.S. at 919.

21 **B. Specific Jurisdiction**

22 OG argues that specific jurisdiction exists over Pacific Ocean because the
23 company, acting through Abraham, committed an in-state intentional tort by transferring
24 Blessings' assets. (Doc. 187 at 4-6.) The Court previously declined to attribute
25 Blessings' in-state initiation of asset transfers to ADAB Mexico without first engaging in
26 an alter-ego analysis. (Doc. 217 at 9.) For the same reasons, the Court declines to

27 ⁴ Pacific Ocean originally erroneously filed its MTD in CV-19-284 and attached
28 Abraham's declaration to the Motion. Pacific Ocean failed to attach the declaration when
it re-filed the Motion in CV-18-322. Accordingly, the Court cites to the declaration
appearing on the docket in CV-19-284.

1 attribute Blessings’ in-state initiation of asset transfers to Pacific Ocean. Furthermore,
2 the Court notes that there is no evidence in the current record that any assets were
3 transferred directly from Blessings to Pacific Ocean. Rather, the evidence indicates—at
4 most—that Blessings directed the transfer of assets to ADAB Mexico, and Pacific Ocean
5 later leased from ADAB Mexico equipment that had been transferred to ADAB Mexico
6 from Blessings. Even if Pacific Ocean is not a good-faith transferee of assets originally
7 transferred from Blessings to ADAB Mexico, Pacific Ocean’s conduct—negotiating an
8 equipment lease with ADAB Mexico—occurred in Mexico. Accordingly, OG has not
9 shown that Pacific Ocean committed an intentional tort in Arizona.

10 OG argues that, even if Pacific Mexico’s conduct took place in Mexico, the
11 company is still subject to specific personal jurisdiction in Arizona under the “effects”
12 test of *Calder v. Jones*, 465 U.S. 783 (1984). (Doc. 187 at 6-13.) Under that test, a
13 defendant purposefully directs conduct at a forum state by (1) committing an intentional
14 act, (2) expressly aimed at the forum state, (3) that causes harm that the defendant knows
15 is likely to be suffered in the forum state. *Schwarzenegger*, 374 F.3d at 803 (citing *Dole*
16 *Food*, 303 F.3d at 1111). OG argues that Pacific Ocean is a beneficiary of equipment
17 fraudulently transferred from Blessings to ADAB Mexico, and that the transfer was an
18 intentional act that was expressly aimed at Arizona because it was done for the purpose
19 of shielding Blessings from creditors seeking to collect in Arizona. (Doc. 187 at 6-13.)

20 The Court has already found that OG has established a likelihood of success in
21 proving that Blessings fraudulently transferred assets to ADAB Mexico. (Doc. 218 at 8-
22 10.) The Court has also found that OG has established a *prima facie* case of specific
23 personal jurisdiction over ADAB Mexico based primarily on those alleged fraudulent
24 transfers. (Doc. 217 at 9-11.) In finding personal jurisdiction over ADAB Mexico, the
25 Court noted that harm from a plaintiff’s inability to collect on a judgment may be felt in
26 the forum state of the collection action as well as the state in which the plaintiff has its
27 the principal place of business, *see Best Western Int’l*, 2012 WL 2952363, at *4, and that
28 the record supports an inference that ADAB Mexico knew its receipt of assets from

1 Blessings would likely cause such harm in Arizona. (*Id.* at 10.)

2 OG's allegations supporting the exercise of personal jurisdiction over Pacific
3 Ocean are significantly more tenuous than those supporting the exercise of personal
4 jurisdiction over ADAB Mexico. Under Arizona's UFTA, "to the extent a transfer is
5 voidable in an action by a creditor" the creditor may obtain a judgment against either
6 "[t]he first transferee of the asset or the person for whose benefit the transfer was made,"
7 or "[a]ny subsequent transferee other than a good faith transferee who took for value."
8 A.R.S. § 44-1008(B)(1)-(2). OG alleges that Pacific Ocean is a subsequent transferee of
9 Blessings' equipment and is not a good-faith transferee who took for value. (Doc. 154 at
10 17-18; Doc. 187 at 10-11.)

11 OG does not argue that legal title to the equipment was transferred to Pacific
12 Ocean; it merely alleges that Pacific Ocean is using the equipment pursuant to an insider
13 equipment lease entered into by Pacific Ocean and ADAB Mexico. (Doc. 154 at 14-15.)
14 Abraham avers that Pacific Ocean pays fair market value for its use of the equipment.
15 (Doc. 24-1 at 5 in CV-19-284.) The current record does not contain evidence of the price
16 Pacific Ocean pays or how that price was agreed upon. Nevertheless, even if the Court
17 were to assume that Pacific Ocean does not pay fair market value for its use of the
18 equipment, the circumstances are too tenuous to support a finding that Pacific Ocean
19 knew that its mere use of the equipment would likely cause harm to creditors seeking to
20 collect from Blessings in Arizona.⁵ OG has failed to establish a *prima facie* case of
21 personal jurisdiction over Pacific Ocean.

22 **C. Leave to Amend**

23 OG argues that, if Pacific Ocean's MTD is granted, OG is entitled to leave to
24 amend its UFTA FAC. (Doc. 187 at 14.) "Dismissal with prejudice and without leave to
25 amend is not appropriate unless it is clear . . . that the complaint could not be saved by
26 amendment." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.

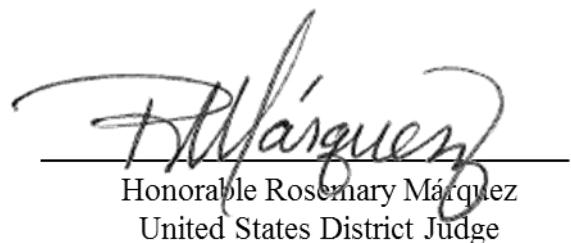
27 ⁵ The Court notes that the allegations of OG's UFTA FAC imply that Pacific Ocean
28 actually pays *more* than fair market value for the equipment lease as part of a scheme to
allow David as co-owner of ADAB Mexico to share in revenues funneled from ADAB
Tucson to ADAB Mexico via Pacific Ocean. (See Doc. 154 at 14-15.)

1 2003) (per curiam). Accordingly, in the absence of undue delay, bad faith or dilatory
2 motive, repeated failure to cure deficiencies, undue prejudice to the opposing party, or
3 futility of amendment, leave to amend should be freely granted. *Foman v. Davis*, 371
4 U.S. 178, 182 (1962) (citing Fed. R. Civ. P. 15(a)). Here, granting OG leave to amend
5 will likely cause further delay in this case. Furthermore, OG has already amended its
6 UFTA FAC once after being put on notice of the personal-jurisdiction issue. However, it
7 is not entirely clear that the UFTA FAC's allegations against Pacific Ocean could not be
8 saved by further amendment. Accordingly, the Court will grant leave to amend.

9 **IT IS ORDERED** that Pacific Ocean's Rule 12(b)(2) Motion to Dismiss (Doc.
10 157) is **granted**. The claims asserted in the UFTA FAC (Doc. 154) against Defendant
11 Pacific Ocean Harvest, S. De R.L. De C.V. are **dismissed without prejudice for lack of**
12 **personal jurisdiction**.

13 **IT IS FURTHER ORDERED** that, within **thirty (30) days** of the date this Order
14 is filed, Plaintiff Ocean Garden Products, Inc. may file a Second Amended UFTA
15 Complaint containing additional or different allegations relevant to the issue of personal
16 jurisdiction over Defendant Pacific Ocean Harvest, S. De R.L. De C.V.

17 Dated this 24th day of October, 2019.

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22 Honorable Rosemary Márquez
23 United States District Judge
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